

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease W-75125.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

When the lessee fails to pay rentals on or before the anniversary date of the lease, where no oil or gas is being produced in paying quantities on the leased premises, then the lease shall automatically terminate by operation of law; however, if the full rental amount has been paid within 20 days of the lease anniversary date, and the failure was justifiable or not due to a lack of reasonable diligence, then the Secretary may reinstate the lease.

2. Oil and Gas Leases: Reinstatement

Late payment of an annual rental may be considered justifiable if the untimeliness was proximately caused by circumstances outside the lessee's control at or near the anniversary date of the lease; however, travel does not ordinarily prevent a person from making payment or arranging for others to make payment in his absence.

3. Oil and Gas Leases: Reinstatement

Neither the bulk nor the complexity of an individual or a corporate lessee's business organization constitutes adequate justification for a late payment, and the Board cannot conclude that a late payment is justified when the lessee neglects to order his business affairs so that his lease rental is paid on time.

4. Oil and Gas Leases: Reinstatement

In order to show that a late payment was not due to a lack of reasonable diligence, a lessee must ordinarily

show that payment was made sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing the payment one day after it is due does not constitute reasonable diligence.

APPEARANCES: Leo M. Krenzler, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

Leo M. Krenzler has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated June 27, 1983, denying his petition for reinstatement of noncompetitive oil and gas lease W-75125.

BLM issued that noncompetitive oil and gas lease to Krenzler, to be effective May 1, 1982, for 640 acres; sec. 33, T. 13 N., R. 99 W., sixth principal meridian, Sweetwater County, Wyoming. The lease was issued pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). BLM advised appellant in a notice of May 13, 1983, that his oil and gas lease had terminated May 1, 1983, the anniversary date of the lease <sup>1/</sup> for failure to pay rentals in a timely manner. The \$640 oil and gas lease rental payment was sent in an envelope stamped by a postage meter April 30, 1983, postmarked May 2, 1983, and received by BLM on May 5, 1983.

The termination notice advised appellant of his right to petition BLM for reinstatement of the lease pursuant to the Act of May 12, 1970, 30 U.S.C. § 188(c) (1982), and regulation 43 CFR 3108.2-1(c) (1982) (class I reinstatement). He filed a petition for reinstatement in a May 31, 1983, telegram and a June 7, 1983, letter. In the telegram he stated:

Emergency family matters precluded me from reviewing the lease in such detail that would make me aware of due date having the meaning of payment in your possession. My wife was instructed to make the lease payment from the notice we received from you in the mail. I left to take my elderly parents from Walla Walla, Washington to Grand Junction, Colorado, in our motor home. Our payment was made in good faith and should be reinstated accordingly.

BLM denied appellant's petition for reinstatement of the lease on the grounds that the late payment was not justifiably delayed, and reasonable diligence was not exercised in transmitting the payment. BLM informed

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<sup>1/</sup> The lease anniversary date was May 1, 1983, but because it fell on a Sunday, appellant was entitled to make payment May 2, the next working day. Larry W. Ferguson, 81 IBLA 167 (1984). The relevant regulation, 43 CFR 3108.2-1(a) (1982), in effect at the time, provided, "However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely." (Emphasis added.) In this case although payment was postmarked the next working day, May 2, it was not received until May 5, 1983, and therefore the rental payment was not timely.

Krenzler that he could appeal the denial of his petition for a class I reinstatement, or he could petition to have his lease reinstated under section 401 of the Federal Oil and Gas Royalty Management Act of 1983 (FOGRMA), P.L. 97-451, 96 Stat. 2462, codified in relevant part at 30 U.S.C. § 188(d) and (e), (class II reinstatement). Krenzler appealed the BLM denial of his petition for a class I reinstatement of the oil and gas lease. He has not sought a class II reinstatement. The Board affirms the BLM decision.

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when the lessee fails to pay rentals on or before the anniversary date of the lease where no oil or gas in paying quantities is being produced on the leased premises, "the lease shall automatically terminate by operation of law." If the lessee has paid the full rental amount due within 20 days after the lease anniversary date, and the lessee shows the failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence, then the Department may, under certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-1(c) (1982). Arthur M. Solender, 79 IBLA 70 (1984). That regulation provides:

Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental.

43 CFR 3108.2-1(c) (1982).

Regulation 43 CFR 3108.2-1(c)(2) (1982) provides: "The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence will be on the lessee." (Emphasis added.) Davis Oil Co., 79 IBLA 218 (1984); Vernon I. Berg, 72 IBLA 211 (1983).

In his statement of reasons for appeal, Krenzler states that he was in Hawaii for 4 months, from late 1982 through late March 1983. Upon his return from the islands, he had "boxes of mail to process including your notice of lease payment due."

[2] Late payment of an annual rental may be considered justifiable if the untimeliness was proximately caused by circumstances outside the lessee's control at or near the anniversary date of the lease. William F. Branscome, 81 IBLA 235 (1984). However, travel, either for business or pleasure, does not ordinarily prevent an individual from making payment or arranging for

others to make payment in his absence. William F. Branscome, supra. Appellant's statement that he was in Hawaii for 4 months is not sufficient reason to justify the late payment, especially in light of the fact that he returned home a full month or longer prior to the lease anniversary due date. Promixity in time of the untoward occurrence is an essential element in the justification of an untimely rental payment. International Resource Enterprises, Inc., 55 IBLA 386 (1981). The Board is concerned with circumstances that occurred at or near the anniversary date of the lease. *Id.* The trip to Hawaii and the backlog of mail fail to justify the untimely rental payment.

Appellant also states that a December 31, 1982, fire destroyed part of his business, 2 boat houses and 20 boats belonging to his customers. He therefore had to deal with fire-related problems with "salvage companies, numerous insurance companies, contractors and the EPA \* \* \*" upon his return home.

While the fire was a circumstance outside lessee's control, it occurred 4 months prior to the lease anniversary. As noted above, the circumstances outside lessee's control which have prevented timely rental payment must occur relatively near the anniversary date of the lease. Joanne F. Bechtel, 76 IBLA 1 (1983). This fire was too remote in time to satisfy this requirement. In effect, appellant must be able to establish a causal link between the disruptive occurrences and his failure to pay the rentals on time. Joanne F. Bechtel, supra. Fire-related business transactions may have dominated Krenzler's time during the month prior to the anniversary date; they did not, however, proximately cause the late payment of the lease rental.

[3] Appellant appears to argue that the fire and the attendant business transactions, the backlog of paperwork attributable to the Hawaii trip, and pressing family concerns, collectively, prevented him from making a timely payment. The Board has repeatedly held, however, that neither the bulk nor the complexity of a corporate lessee's business organization constitutes adequate justification for a late payment. Larry W. Ferguson, 81 IBLA 167 (1984) (construction project); Crest Oil & Gas Corp., 72 IBLA 370 (1983) (company reorganization); International Resource Enterprises, Inc., *supra*, (negotiation and litigation over joint venture). The same rule applies to an individual lessee. Larry W. Ferguson, supra. The Board cannot conclude that a late payment is justified when the lessee neglects to order his business affairs in such a fashion that his lease rental is not paid on time. Larry W. Ferguson, supra.

Krenzler's June 7, 1983, petition to reinstate the lease describes another event as justification for the tardy payment. He states:

In April it was decided by the family that my Parents (ages 83 & 88) should be moved from Walla Walla, where they were living alone, to Grand Junction, Colorado to live near my Sister. The initial plan was for them to fly. My Father who is 88 years old, had never flown and preferred not to do so. We respected his wishes and I volunteered to transport them in my motor home. At their ages they have special diets and cannot eat in restaurants. This also made the motor home the more practical way to make the trip.

After preparing the motor home for the trip, I left for Walla Walla the morning of April 29th to assist my Parents in preparation for the move. My wife flew to Walla Walla on May 4, and we left for Grand Junction the following day.

The trip to move his parents was planned and executed over a relatively lengthy time period, and was clearly within his control. Control by lessee over such external affairs negates any contention that the circumstances justified an untimely oil and gas lease payment. When the failure to pay the anniversary rental on time is due to negligence, forgetfulness, or inadvertence, the failure is not justifiable. Eleanor L. M. Dubey, 76 IBLA 177 (1983). Even though appellant departed on April 29, 2 days prior to the due date, he had had a month at home before his departure within which to make the payment. Individually or collectively, the circumstances outlined by appellant do not justify his untimely rental payment.

[4] Pursuant to the regulations in effect in May of 1983, to prove "reasonable diligence" a lessee must ordinarily show that payment was mailed sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2) (1982). <sup>2/</sup> The date of mailing is usually the date of the postmark unless there is satisfactory corroborating evidence to support lessee's assertion that the mailing occurred at an earlier date. Arthur M. Solender, *supra*. In this case the rental payment envelope was metered and, according to Krenzler, mailed April 30. It was postmarked, however, May 2, 1 day after payment was due. Mailing the payment 1 day after it is due does not constitute reasonable diligence. (Anthony F. Hovey, 79 IBLA 148 (1984)). Therefore, BLM properly denied lessee's class I petition to reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-1(c) (1982), as neither justification nor reasonable diligence has been demonstrated.

BLM, in its June 27 decision denying appellant's petition for a class I reinstatement, informed him that in addition to his right to appeal that decision to the Board, he had the right, subject to certain conditions, to petition for a class II reinstatement pursuant to section 401 of the FOGPMA, *supra*. BLM denied appellant's petition for reinstatement under section 188(c), but did not adjudicate appellant's rights pursuant to section 188(d) and (e).

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<sup>2/</sup> The regulation governing reinstatements was amended effective Aug. 22, 1983, to provide that where a rental payment is "postmarked by the U.S. Postal Service, common carrier or its equivalent (not including private postal meters) on or before the lease anniversary date and is received in the proper BLM office no later than 20 days after such anniversary date [it] shall be considered timely filed." 43 CFR 3108.2-1(a) (emphasis added). See William F. Branscome, *supra* at 236. (The Board construes this regulation to require a class I reinstatement of such oil and gas leases on the ground that the failure to pay was not due to a lack of diligence.) In this case, however, appellant's payment was postmarked May 2, 1983, 1 day after the anniversary date, so he cannot qualify under this regulation. Larry W. Ferguson, *supra*.

Section 401 provides that leases which have terminated because of the "inadvertent" failure of lessee to pay the rental on or before the lease anniversary date may be reinstated by the Secretary provided certain conditions are met. See Kurt W. Mikat, 82 IBLA 71 (1984). Among other requirements, the statute requires lessee to "reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed \$500," and to "reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement." 30 U.S.C. § 188(e) (1982).

BLM determined in its June 27 decision that Krenzler's failure to timely pay the rentals was "inadvertent." BLM outlined the procedural requirements which are conditions precedent to a class II reinstatement. BLM stated that in order to petition for a class II reinstatement appellant had to submit within 60 days of receipt of the June 27 notice "all back rental which has accrued from the date of termination, in the amount of \$5 per acre or fraction thereof, together with a reinstatement fee of \$500."

There is no evidence in the record before the Board that appellant intended to petition for reinstatement of the oil and gas lease pursuant to section 401 of FOGDMA. He submitted \$1 per acre rental and royalty, not the required \$5 per acre back rental. <sup>3/</sup> Nor has he submitted the \$500 administrative reimbursement fee set out in 30 U.S.C. § 188(e) (1982).

If appellant intended to petition for reinstatement pursuant to section 188(d) and (e), we must deny his petition because he failed to submit the required payments.

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<sup>3/</sup> The Board notes that in Kurt W. Mikat, *supra*, where the lessee also submitted \$1 per acre back rental and royalty, we properly denied his section 401 petition for reinstatement on the grounds that he failed to submit the entire \$5 per acre required by section 188(e). Unlike Kurt W. Mikat, in the instant case, at the time BLM advised Krenzler of the section 401 lease requirements, June 27, 1983, the official BLM policy required lessee pay only \$1 per acre back rental and royalty.

Information Memorandum No. 83-183 of Apr. 13, 1983, from the Director, BLM, required \$5 back rental and royalties per acre for class II reinstatements. This was changed by Instruction Memorandum No. 83-558 of May 24, 1983, which required that class II back rentals and royalties be "at the same rates as were in effect at the time of termination," or \$1 per acre. The \$1 per acre rule remained in effect until August. On Aug. 16, 1983, following the direction provided by a July 13, 1983, resolution by the House Committee on Interior Insular Affairs, the Director, BLM, issued Information Memorandum No. 83-183 requiring the payment of back rentals and royalties be equal to "minimum future royalties," or \$5 per acre. See Kurt W. Mikat, *supra* at 73.

Whether a section 401 lease reinstatement petition may be granted where lessee's payment is made in reliance upon the short-lived BLM policy requiring only \$1 per acre back rental and royalty is an issue unnecessary to the resolution of this case, which has been decided on another ground; *i.e.*, the failure of lessee to timely pay the administrative costs of such lease reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Gail M. Frazier  
Administrative Judge

